

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING
SOLICITING COMMENTS REGARDING COLLECTION
AND REMITTANCE OF FRANCHISE FEES ON
DWR ELECTRIC POWER SALES**

This ruling is issued in conformance with Ordering Paragraph 13 of Decision (D.) 00-02-052, which directed the assigned Administrative Law Judge to solicit comments on legal issues relating to treatment of franchise fees for power sold by the California Department of Water Resources (DWR) to customers in the service territories of the three major investor-owned utilities (IOUs).

Background

In D.00-02-052, the Commission noted the controversy regarding the rights and obligations of municipalities, IOUs, and DWR regarding the collection and

remittance of franchise fees on sales of electric power by DWR. DWR claims that franchise fees are the obligation of the IOUs, and that such fees are part of each utility's cost of service, separate and distinct from net short energy purchases. DWR asserts that it has no responsibility for franchise fees, and excludes them from its revenue requirement.

The position expressed by various municipalities is that they cannot be lawfully deprived of franchise fees on energy revenues merely because DWR as a state agency has assumed the role of predominant energy supplier. The municipalities primary interest is in ensuring that the Commission enforces the remittance of franchise fees, whether from the IOUs or from DWR.

The position of the IOUs is that they are only obligated to remit franchise fees on their own power sales revenues. Since DWR sales revenues are not part of utility earnings, the IOUs do not believe franchise fees can properly be assessed on them for such sales.

The Commission, however, did not reach a final resolution of this dispute in D.00-02-052, but ordered the utilities to maintain the status quo pending further determinations of an appropriate course of action. Under the status quo, each IOU continues to remit franchise fees to the municipalities for DWR-supplied power and keeps track of such remittances in memorandum accounts. The purpose of the memorandum accounts is to make the IOUs whole for any franchise fees remitted on behalf of DWR that are not already reflected in retail rates.¹

¹ In the case of San Diego Gas & Electric, the interim rate increase it was granted in D.01-09-059 included a provision for franchise fees on DWR sales.

This ruling is issued in accordance with D.00-02-052 to develop a further record on the issues relating to the collection and remittance of franchise fees on DWR-supplied power in order to determine a satisfactory long-term resolution. The Commission shall consider the need for further action on the franchise fee issue following analysis of the legal and policy issues as addressed in parties' further comments. Accordingly, parties are directed to address the following issues:

1. Under the general provisions of existing municipal charters, does the prescribed formula for franchise fees legally require that electric power sales made by DWR be included as a component of "gross revenues" subject to franchise fees?
2. (a) Explain and justify what legal implications, if any, may be inferred from Public Utilities Code Sections 6351 through 6354.1 (Municipal Public Lands Use Surcharge) regarding (a) the rights of municipalities to assess franchise fees on DWR-supplied power sales, and (b) the obligation of DWR to collect franchise fees on its sales of electric power and to remit those franchise fees to the municipalities.

(b) What conclusions can be drawn from Public Utilities Code Sections 6351 through 6354.1 regarding legislative intent as to the recognition of DWR energy sales in determining franchise fee obligations?

(c) Since the "State of California or a political subdivision thereof" is excluded from the definition of "transportation customer" under Public Utility Code Section 6351(c), doesn't this preclude holding DWR responsible for remittance of franchise fees under the provisions of Sections 6351-6354.1?
3. (a) What legal responsibility do the IOUs have for collection and remittance of franchise fees to municipalities related to DWR-supplied electric power sales, given that the IOU serves only

as a collection agent, but does not hold title to, nor sell, DWR power to end use customers?

- (b) More specifically, under the applicable provisions of Public Utilities Code Division 3—“Public Utility Franchises by Local Governments,” on what basis, if any, can IOUs be required to remit franchise fees on power that is owned and sold by DWR pursuant to AB1X legislation?
- 4. Assuming that IOUs are provided ongoing compensation through end user rates for the remittance of franchise fees to municipalities related to the sale of DWR electric power, what legal, administrative, or other impediments, if any, would result from continuing to require IOUs to be responsible for remitting such franchise fees indefinitely?
 - 5. (a) Is new legislation necessary or appropriate in order to clarify DWR responsibility with respect to franchise fees and to provide for municipalities to be made whole for franchise fees related to DWR power sales? If so, what entity bears the primary responsibility for pursuing such a legislative remedy?
 - (b) Should the status quo treatment of franchise fees adopted in D.02-02-052 remain in effect until or unless new legislation is enacted, clarifying or delineating franchise fee responsibilities on DWR electric power sales?
 - 6. Since DWR has the sole responsibility to make the determination that its revenue requirement is “just and reasonable” under Public Utilities Code Section 451, under what jurisdiction or authority, if any, could this Commission require DWR to collect and remit franchise fees on its power sales?

IT IS RULED that:

1. Parties are directed to file briefs, addressing the above-referenced issues.
2. Opening briefs shall be due on April 16 and reply briefs shall be due on April 26, 2002.
3. Further disposition of this issue shall be considered following review and receipt of these briefs.

Dated April 3, 2002, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Soliciting Comments Regarding Collection and Remittance of Franchise Fees on DWR Electric Power Sales on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated April 3, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.